

REMARKS/ARGUMENTS

In view of the foregoing amendments and the following remarks, the applicants respectfully submit that the pending claims are not anticipated under 35 U.S.C. § 102 and are not rendered obvious under 35 U.S.C. § 103. Accordingly, it is believed that this application is in condition for allowance. If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicants respectfully request that the Examiner contact the undersigned to schedule a telephone Examiner Interview before any further actions on the merits.

The applicants will now address each of the issues raised in the outstanding Office Action.

Finality of the Office Action

The applicants respectfully submit that the finality of the Office Action was improper. Specifically, claims 10, 30 and 31 are rejected under a new ground of rejection. However, in the previous amendment, claim 10 was as originally filed and depended from claim 9, which was broadened. Claim 30 added in the previous amendment was equivalent to original claim 1, and claim 31 added in the previous amendment was equivalent to original claim 9.

Regarding when a final rejection is proper on the second action, MPEP 706.07(a) states, in pertinent part:

Under present practice, second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).* [Emphasis added.]

Since the final Office Action included a new ground of rejection that was neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement, the finality of the Office Action is improper.

Objections

Claims 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Claim 13 has been rewritten in independent form to include the features of base claim 9 (canceled) and intervening claims 11 and 12 (both canceled). Therefore, claim 13 is now in condition for allowance. Since claims 14 and 15 depend from claim 13, these claims are similarly in condition for allowance.

The applicants again note that claims 4-6 recite method acts corresponding to the acts performed by the programmable device in claims 13-15. Claims 4-6 were not specifically addressed in any of the Office Actions. Accordingly, the applicants believe that the Examiner should have indicated that these claims also recite

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allowable subject matter. Claim 4 has been rewritten to include the features of base claim 1 (canceled) and intervening claims 2 and 3 (both canceled). Therefore, claim 4 is now in condition for allowance. Since claims 5 and 6 depend from claim 4, these claims are similarly in condition for allowance.

Rejections under 35 U.S.C. § 102

Claims 1-3, 7-9, 11, 12 and 16 stand rejected under 35 U.S.C. § 102(b) as being participated by U.S. Patent No. 5,881,050 ("the Chevalier patent"). The applicants respectfully request that the Examiner reconsider and withdraw this ground of rejection in view of the following.

First, since claims 1-3, 9, 11 and 12 have been canceled, this ground of rejection is rendered moot with respect to these claims.

Second, claims 7 and 8, as amended, depend from claim 4, which is in condition for allowance for the reasons discussed above. Similarly, claim 16, as amended, depends from claim 13 which is in condition for allowance.

Rejections under 35 U.S.C. § 103

Claims 10, 30 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Chevalier patent as applied to claims 1 and 9, and further in view of U.S. Patent No. 6,594,265 ("the Etorre patent"). The applicants respectfully request that the Examiner

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reconsider and withdraw this ground of rejection in view of the following.

Claims 10 and 31, as amended, depend from claim 13 which is in condition for allowance. Similarly, claim 30, as amended, depends from claim 4 which is in condition for allowance for reasons state above. Therefore, claims 10, 30 and 31 are all in condition for allowance

Allowed Claims

Claims 21-24 and 26-29 are allowed. Claim 27 has been amended to recite an apparatus, since it was inadvertently amended to recite a method in the previous amendment.

Entry of Amendments

Since the amendments do not raise any new issues, but rather place the application into condition for allowance, these amendments should be entered. In any event, since the finality of the Office Action was improper for reasons discussed above, the amendments should be entered.

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Conclusion

In view of the foregoing amendments and remarks, the applicants respectfully submit that the pending claims are in condition for allowance. The applicants reserve the right to pursue a patent(s) claiming any unclaimed subject matter, such as by means of a continuation application for example. The applicants request that the Examiner pass this application to issue.

Respectfully submitted,

November 8, 2006

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (and any accompanying paper(s)) is being facsimile transmitted to the United States Patent Office on the date shown below.

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